



**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

PAUL ZUKERBERG

Vs.

C.A. No. 2013 CA 006628 B

DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS

INITIAL ORDER AND ADDENDUM

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure ("SCR Civ") 40-I, it is hereby **ORDERED** as follows:

(1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge's name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the Summons, the Complaint, and this Initial Order. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in SCR Civ 4(m).

(3) Within 20 days of service as described above, except as otherwise noted in SCR Civ 12, each defendant must respond to the Complaint by filing an Answer or other responsive pleading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in SCR Civ 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an Initial Scheduling and Settlement Conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients **prior** to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Quality Review Branch (202) 879-1750 may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than six business days before the scheduling conference date. No other continuance of the conference will be granted except upon motion for good cause shown.

(6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each Judge's Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court's website <http://www.dccourts.gov/>.

Chief Judge Lee F. Satterfield

Case Assigned to: Judge BRIAN F HOLEMAN

Date: September 30, 2013

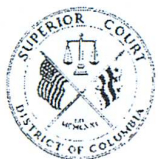
Initial Conference: 9:30 am, Friday, January 03, 2014

Location: Courtroom 214

500 Indiana Avenue N.W.

WASHINGTON, DC 20001

Caio.doc



Superior Court of the District of Columbia
CIVIL DIVISION
500 Indiana Avenue, N.W., Suite 5000
Washington, D.C. 20001 Telephone: (202) 879-1133

PAUL ZUKERBERG

Plaintiff

vs.

Case Number **13-0006628**

COUNCIL OF THE DISTRICT OF COLUMBIA Serve: Nyasha Smith, Secretary
Defendant

SUMMONS

to the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the party plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Suite 5000 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within five (5) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Paul Zukerberg Bar #388152

Clerk of the Court

Name of Plaintiff's Attorney

1790 Lanier Place, NW

By

Deputy Clerk

Address

Washington, DC 20009

202-232-6400

Date

9/30/13

Telephone

如需翻译, 请打电话 (202) 879-4828

Veuillez appeler au (202) 879-4828 pour une traduction

Để có một bản dịch, hãy gọi (202) 879-4828

번역을 원하시면, (202) 879-4828 로 전화하십시오

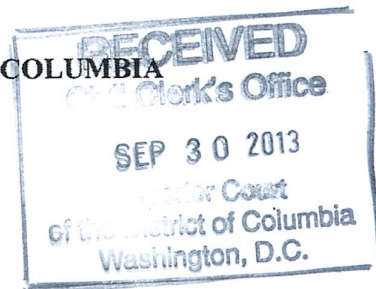
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IMPORTANT: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (202-628-1161) or the Neighborhood Legal Services (202-279-5100) for help or come to Suite 5000 at 500 Indiana Avenue, N.W., for more information concerning places where you may ask for such help.

See reverse side for Spanish translation
Vea al dorso la traducción al español

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA



PAUL ZUKERBERG
1790 Lanier Place, NW
Washington, DC 20009
*Individually, and on behalf of other
similarly situated D.C. Voters*

Plaintiff,

vs.

DISTRICT OF COLUMBIA BOARD
OF ELECTIONS AND ETHICS
441 4th Street, NW
Washington, DC 20001

Serve: Deborah Nichols, Chairperson
441 4th Street, NW, Suite 250
Washington, DC 20001

and

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, NW
John A. Wilson Building
Washington DC, 20004

Serve: Nyasha Smith
Secretary to the Council
1350 Pennsylvania Avenue, NW
John A. Wilson Building, Suite 5
Washington DC, 20004

Defendants

CA No. 13 - 0006628

Jury Trial Demanded

COMPLAINT

1. This is an action to secure the rights of District of Columbia voters to elect their Attorney General.

2. On November 2, 2010, District of Columbia voters, by a 3-to-1 majority, ratified an Amendment to the District of Columbia's Charter creating a new Office of Elected Attorney General.¹

3. The *Elected Attorney General Charter Amendment* reads in relevant part:

(a) The Attorney General for the District of Columbia shall be elected on a partisan basis by the registered qualified electors of the District.

* * *

(e) The first election for the position of Attorney General shall be after January 1, 2014.

4. Following ratification Charter Amendment, District law requires the D.C. Council to "adopt such acts as are necessary to carry out the [amendment's] purpose."

5. Instead, on July 10, 2013, shortly before 10 p.m., without a hearing, the D.C. Council voted eight to five to *overturn* the *Elected Attorney General Charter Amendment*, by removing the office of Elected Attorney General from the 2014 ballot.²

6. Elections in the District of Columbia are administered by the District of Columbia Board of Elections and Ethics (BOEE), an independent agency of the District government.

7. Following the July 10, 2013 Council vote, which eliminated the office of Elected Attorney General from the 2014 ballot, BOEE stated that the Elected Office of Attorney General is "tentatively included in the list of offices appearing on the April 1, 2014 Primary ballot, pending the Council's consideration and the Mayor's review of [the

¹ D.C. Board of Elections & Ethics Official Results from the Nov. 2, 2010 General

² See B20-134, Elected Attorney General Implementation and Legal Services Establishment Amendment Act of 2013, § 1-301.82(a) (July 10, 2013) (the "2013 Act").

2013 Act].” An asterisks (*) now appears on all BOEE documents, warning any potential candidates for Attorney General that the inclusion of Attorney General as an elected office is likely to be short-lived, and the elected office of Attorney General absent from the 2014 ballot.

8. As a result of the uncertainty surrounding the election of the Attorney General, no candidates have declared for the Elected Office of Attorney General, although the official election cycle begins on November 9, 2013, less than nine weeks away.

9. The uncertainty surrounding the Attorney General election has a chilling effect on the democratic process, has dissuaded qualified citizens from seeking that office, has chilled political speech, and deprived the voters of their rights, as secured by the Constitution, established law, and their own Charter.

Parties

10. Plaintiff Paul Zukerberg is a District of Columbia elector, by virtue of his status as a duly registered voter in the District of Columbia, and accordingly has standing to bring this action, on behalf of himself and other similarly situated District of Columbia voters.

11. Zukerberg has voted in District of Columbia elections in the past, and desires and intends to vote in the forthcoming 2014 primary and general elections in the District of Columbia, including for the office of Elected Attorney General for the District of Columbia, in accord with the rights secure to him by the *Elected Attorney General Charter Amendment*.

12. Defendant District of Columbia Board of Elections and Ethics (BOEE) is an independent agency of the District government, responsible for the administration of elections, ballot access and voter registration.

13. The Attorney General of the District of Columbia is the legal advisor to the District government, represents the District's interests in all proceedings at law, has the power to investigate wrongdoing, as well as executive responsibility, including the prosecution of municipal offenses, and other duties proscribed by law, custom and practice.

14. The *Elected Attorney General Charter Amendment* is the product of a broad-based political reform initiative, instituted by District voters, who had grown tired of continual political corruption, bribery, theft, campaign fraud and bad government, and who, through the initiative process, determined that they wished to have an elected Attorney General, whose decisions could be judged at the ballot box, and whose voice would be independent of the Mayor and Council.

Count I

(Deprivation of Constitutional Rights in violation of 42 U.S.C. § 1983)

15. The First, Fifth and Fourteenth Amendments to the Constitution guarantee the citizens of the District of Columbia, including plaintiff, the right to an effective and meaningful vote, including the right to vote to amend the Charter of the District of Columbia, and by virtue of that amendment, to elect their own Attorney General.

16. The *Elected Attorney General Charter Amendment* has been duly ratified, and such ratification represents a core right of the people to amend the laws by which they are governed, and to create such offices of elected representatives, to whom they

entrust their most sacred and fundamental rights.

17. The *Elected Attorney General Implementation and Legal Service Establishment Act of 2013* is void as unconstitutional, because it nullifies the Charter Amendment of 2010, by eliminating and removing the Office of Elected Attorney General from the 2014 ballot, and further, by its very existence, and its threat to eliminate such office, has a chilling effect on the fundamental rights of the people, as secured by the Constitution.

18. The *Elected Attorney General Implementation and Legal Service Establishment Act of 2013* was enacted by the D.C. Council under color of District law, and is enforced under color of law by the BOEE, defendant herein, depriving the plaintiff of the rights, privileges and immunities secured by the Constitution and laws of the United States, and the Charter and laws of the District of Columbia, in violation of 42 U.S.C. § 1983.

Count II

(Violation of Substantive Due Process)

19. The right to vote is fundamental and inseparable from the concept of ordered liberty, deeply rooted in this Nation's history and tradition.

20. The right of the people of the District of Columbia to change and amend the Charter under which they are governed, and to create, eliminate and amend elected offices, whose occupants carry out the duties of government, is fundamental, implicit in the concept of ordered liberty, and deeply rooted in this Nation's history and tradition.

21. Substantive due process protects individuals against government action

which is arbitrary, unconscionable, oppressive, or which curtails or eliminates fundamental rights.

22. Even where a fundamental right is not curtailed, but merely chilled, substantive due process guarantees that such fundamental rights are protected, and the full measure of such rights are guaranteed uninhibited.

23. No right is more precious in a free country than that of having a voice in the election of those who make and enforce the law under which, as citizens, we must live. Other rights, even the most basic, are illusory, if the right to vote is undermined.

24. The *Elected Attorney General Implementation and Legal Service Establishment Act of 2013* eliminates the office of Elected Attorney General from the 2014 ballot, nullifies the duly ratified Charter Amendment creating such office, destroys the democratic process by which candidates are selected, and elected offices established, and by doing so, violates the most fundamental rights of a free people, in violation of substantive due process.

Count III

(Violation of the District of Columbia Charter)

25. The right of the people of the District of Columbia to amend their Charter by initiative is fundamental to the democratic process, and is founded on the principal, long enshrined, that all power of government resides ultimately with the people.

26. Charter amendment through the initiative process would be meaningless, if a duly ratified amendment could be overruled and annulled by a mere majority vote of the then-sitting Council.

27. Through the initiative and referendum process, the people have reserved for themselves the ability to make such changes in their government which – for whatever reasons – their elective representatives fail to achieve. Were it otherwise, the initiative process would lack purpose, and the reign of any existing Council amount to tyranny.

28. The *Elected Attorney General Implementation and Legal Service Establishment Act of 2013*, were it to stand, would establish despotism in the District, since any elected Council could willy-nilly eliminate any election called for in the District's Charter, including election for their own office.

Relief Requested

Wherefore, plaintiff demands relief as follows:

- (1) A declaratory judgment that the *Elected Attorney General Charter Amendment* is the operative law in the District of Columbia, and
- (2) Injunctive relief, prohibiting the Board of Elections from removing the Office of Elected Attorney General from the 2014 ballot, and
- (3) Injunctive relief, prohibiting the D.C. Council from taking any action to overturn, frustrate or undermine the Charter Amendment establishing the elected office of Attorney General, including delaying the election or modifying the powers and duties of the Attorney General as they existed at the time of the enactment of *Elected Attorney General Charter Amendment*, and

- (4) A final order holding that the *Elected Attorney General Implementation and Legal Service Establishment Act of 2013* is unconstitutional and void, and
- (5) Awarding such other relief as is necessary to assure the constitutional rights of the citizens are protected, and
- (6) Nominal damages in the amount of one dollar (\$1.) plus such other damages as are appropriate, fees, attorneys fees and costs as are appropriate.

Plaintiff prays a jury trial as to all issues.

/PAUL ZUKERBERG/

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